

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TRUSTEES OF MICHIGAN REGIONAL
COUNCIL OF CARPENTERS'
EMPLOYEE BENEFIT FUND, et al.,

Plaintiffs,

Case No. 05-74310

vs.

HAVANA CONSTRUCTION, L.L.C.
and IAN WALTER,

Defendants.

/

ORDER GRANTING PLAINTIFFS' EX-PARTE MOTION FOR ALTERNATE SERVICE

Plaintiffs move for alternate service of process to be effected upon defendants Havana Construction, L.L.C. and Ian Walter. Service upon both a corporation and an individual may be effected pursuant to the law of the state in which the district court is located, here being Michigan. Fed. R. Civ. P. 4(e), (h)(1). Michigan law provides that, “[o]n a showing that service of process cannot reasonably be made as provided by this rule, the court may by order permit service of process to be made in any other manner reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard.” M.C.R. 2.105(I)(1). Plaintiffs have shown that service of process cannot be made on defendant Ian Walter under M.C.R. 2.105(A) or (B), or on defendant Havana Construction under M.C.R. 2.105(D).

In support of their motion for alternate service, plaintiffs provide the affidavit of the process server, which states that five attempts were made to serve defendants at 5120 Rohns, Detroit, Michigan 48213 - the registered office address. On the first four

attempts, there was no response. However, on December 6, 2005, a female did respond, and stated that there was no company at that address, and Ian Walter had been gone for five years. Plaintiffs suggest as an alternate means of service of process either first class mail or tacking to the door of the address of resident agent Ian Walter.

M.C.R. 2.106 provides for service of process by publication. Pursuant to M.C.R. 2.106(C), defendants are hereby notified:

This action is pending in the United States District Court for the Eastern District of Michigan, in the United States Courthouse located at 231 West Lafayette, Detroit, Michigan 48226;

The plaintiffs are Trustees of Michigan Regional Council of Carpenters' Employee Benefits Fund; Trustees of Michigan Regional Council of Carpenters' Annuity Fund; Trustees of Carpenters' Pension Trust Fund - Detroit and Vicinity; and Trustees of the Carpenters' Vacation Fund - Detroit and Vicinity, The Michigan Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America;

The defendants are Havana Construction, L.L.C., a Michigan limited liability company, and Ian Walter, an individual;

Plaintiffs have brought an action seeking delinquent ERISA fringe benefit contributions, alleging a failure to permit an updated audit of its records relating to fringe benefit contributions owing, and further alleging violations of various duties arising out of these failures.

Upon receiving notice of this action, defendants Havana Construction, L.L.C. and Ian Walter should answer or otherwise defend this action as permitted under the Federal Rules of Civil Procedure and other applicable law;

Defendants' failure to answer or otherwise defend in this lawsuit may lead to entry of the defendants' default and default judgment.

See M.C.R. 2.106(C). Defendant shall be notified of this action by publication as provided for in M.C.R. 2.106(D). Plaintiff shall publish this notice once each week for three consecutive weeks in a newspaper in Wayne County. M.C.R. 2.106(D)(1).

A copy of this order shall also be sent by registered mail, return receipt requested, and by regular 1st class mail to defendants Havana Construction and Ian Walter at 5120 Rohns, Detroit, Michigan 48213. In addition, a copy of this order shall be sent, registered mail, return receipt requested, and by regular mail in c/o Havana Construction's accountant, Christopher M. Scott, at Bultynck & Co. P.C., 39425 Garfield Rd., Clinton Township, MI 48038.

So Ordered.

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

Dated: January 23, 2006

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record on January 23, 2006, by electronic and/or ordinary mail.

s/Josephine Chaffee
Secretary/Deputy Clerk